

**Patrick Media Group d/b/a Eller Media Company  
and Laborers' International Union of North  
America, AFL-CIO. Case 31-CA-22422**

September 30, 1998

**DECISION AND ORDER**

BY MEMBERS FOX, HURTGEN, AND BRAME

On June 2, 1998, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, the Acting General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Patrick Media Group d/b/a Eller Media Company, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*Ann L. Weinman, Esq.*, for the General Counsel.

*Martha Haren McCampbell, Esq.* and *David Prather, Esq.* (*Zinser & Patterson*), of Nashville, Tennessee, for the Respondent.

*Earle E. Brendlinger, Business Representative*, of Hollywood, California, for the Union.

**DECISION**

**STATEMENT OF THE CASE**

BURTON LITVACK, Administrative Law Judge. The unfair labor practice charge, in the above-captioned matter, was filed by Laborers' International Union of North America, AFL-CIO (the Union) on December 4, 1996. Upon investigating the unfair labor practice charge, on May 16, 1997, the Regional Director for Region 31 of the National Labor Relations Board (the Board), issued a complaint, alleging that Patrick Media Group, d/b/a Eller Media Company (Respondent) had engaged in acts and conduct, violative of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent timely filed an answer, essentially denying the commission of the alleged unfair labor practices, and, pursuant

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> We find that the Respondent's discharge of striking employee Michael Tucker violated Sec. 8(a)(1). Accordingly, we find it unnecessary to decide whether it also violated Sec. 8(a)(3) as the judge found. See *Burnup & Sims*, 379 U.S. 21 at 22 (1964). A finding of an 8(a)(3) violation would not materially affect the remedy.

to the notice of hearing, which accompanied the instant complaint, the matter was tried before me on September 2, 3, and 4, 1997, in Los Angeles, California. At the trial, all parties were afforded the opportunity to examine and to cross-examine all witnesses, to offer into the record any relevant oral and documentary evidence, to argue their legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for the General Counsel and by counsel for Respondent, and each has been carefully considered. Accordingly, based upon the entire record herein, including the posthearing briefs and my observation of the testimonial demeanor of each of the several witnesses, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a corporation, maintains an office and place of business in Los Angeles, California, and is engaged in the business of constructing and maintaining outdoor billboards. In the course and conduct of its above-described business operations, Respondent annually derives gross revenues in excess of \$500,000 and purchases and receives, at its Los Angeles, California facility, goods and services, valued in excess of \$50,000, directly from suppliers located outside the State of California. Respondent admits that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. LABOR ORGANIZATION**

Respondent admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ISSUES**

The complaint alleges that Respondent engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act by terminating its employee, Michael Tucker, on November 30, 1996,<sup>1</sup> and, thereafter, failing and refusing to reinstate him because he engaged in activities in support of the Union. Respondent denies the commission of the alleged unfair labor practices, arguing that it had a good-faith belief that Tucker engaged in serious picket line misconduct during an economic strike and terminated him for that reason. Counsel for the General Counsel argues that Tucker did not, in fact, engage in the alleged misconduct and that, assuming any misconduct, such was not serious enough to warrant dismissal of Tucker.

**IV. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. The Facts**

Respondent is engaged in the outdoor advertising business on a nationwide basis, including the State of California, soliciting and selling advertising space on outdoor billboards, which it erects and maintains. Specifically, Respondent's employees are involved in the construction, painting, erection, and maintenance of the outdoor billboards. In Los Angeles, California, Respondent maintains a two-building office and construction facility, located at the intersection of Washington Boulevard and 23rd Street, at which approximately 100 employees work or are based, and, at least through mid-December 1996, Studio Utility Employees Local 724, an affiliated local of the Union (Local 724), represented approximately 37 of the employees, including the construction journeymen, who are engaged in the erection of the outdoor advertising

<sup>1</sup> Unless otherwise specified, all events herein occurred within calendar year 1996.

ing signs. Fred Garcia is Respondent's operations manager and his operations assistant is Christina Delgadillo. The record establishes that, during the fall of 1996, Respondent and the Union were engaged in negotiations for a successor collective-bargaining agreement; that, without an agreement, on November 12, the 37 bargaining unit employees, who were represented by the Union, commenced a concerted work stoppage and economic strike against Respondent; that said employees engaged in picketing at the main entrance to the facility, which is located on 23rd Street, and at a walkway entrance on Washington Boulevard; that Respondent hired replacement workers for the striking employees; and that, after several bargaining unit employees had crossed the picket line and returned to work, the work stoppage and strike ended on December 2.

There is no dispute that, in the early morning hours of November 14, while reporting for work, some of the replacement employees experienced severe tire damage as they maneuvered their vehicles past picketing strikers on 23rd Street and into Respondent's driveway; that a security guard, Pedro Haro, who had been assigned to the driveway entrance,<sup>2</sup> was instructed to remove from the driveway whatever objects had caused the tire damage; that, while Haro, who carried a broom, was outside the entrance gate in the area of the public sidewalk and street and in the midst of the strikers, a brief altercation between the security guard and a picketing striker, Michael Tucker, ensued; that immediately after the incident, Haro reported his version of what had occurred to Respondent's supervisors, who telephoned the Los Angeles police department; and that police officers arrived at the scene of the picketing and questioned Haro and others regarding the confrontation.<sup>3</sup> Haro informed the investigating officers that the picket, whom he recognized as a striking employee but whose name he did not know, had "hit" him on the left side of his face with a 3 foot, wood stick. Either before or after the arrival of the police officers, Haro and another security guard, James Williams, who assertedly witnessed the incident, drafted incident reports for their employer, Tandem Security, and Christina Delgadillo requested that the security guard service transmit these to Respondent. Subsequently, on the morning of November 14, after reading the two incident reports,<sup>4</sup> Fred Garcia instructed Christina Delgadillo and other supervisors to continue investigating the incident for Respondent, specifically to identify the striking employee, who allegedly had struck security guard Haro. Thereafter, Delgadillo obtained sworn statements, regarding the confrontation, from Haro and Williams and the police report of the incident and gave these documents to Garcia, and, 1 day during the next week, James Williams telephoned her and said the employee, who had struck Haro, was on the picket line. According to Delgadillo, she walked out to the main gate, and Williams pointed to Michael Tucker and identified him as the striker, who had confronted and hit Haro with his picket sign. Garcia testified that, based upon

what Delgadillo gave him (the guards' incident reports, their sworn statements, the police report, and Williams' identification of Tucker), he concluded that the alleged discriminatee had engaged in a physical confrontation, a "fight," with Haro, during which the employee shoved and intentionally hit Haro with his picket sign and that, believing he was under no obligation to listen to Tucker's version of his confrontation with Haro or those of any of other strikers who were present as he had no reason to doubt the veracity of the security guards, during the weekend after Thanksgiving, he reached the decision to terminate Tucker—"I wasn't going to allow [any fighting]. . . . I had to take care of it."<sup>5</sup> Accordingly, on November 30, Garcia sent a letter to Tucker, advising him that "effective immediately you are discharged from employment at Eller Media Company. Since November 12, 1996, you have engaged in one or more instances of misconduct, any one of which would independently constitute cause for your discharge." Notwithstanding the wording of his letter, Garcia testified that the precipitous reason for Tucker's discharge was, in fact, the November 14 altercation between Haro and him.<sup>6</sup>

With regard to what occurred during the November 14 altercation between Tucker and Haro, there is no dispute that, as they had done on the first 2 days of the concerted work stoppage, the striking employees, including alleged discriminatee Tucker, commenced picketing in front of the driveway entrance to Respondent's facility on 23rd Street at approximately 4 a.m. and that, at the time the strikers arrived that morning, security guards Haro and Williams were nearing the end of their work shift at their assigned station, the guard shack near the driveway entrance gate. Michael Tucker, who appears to be a middle-aged individual with a not particularly muscular physique and who was carrying a picket sign, a cardboard placard attached to a wood stick, that morning, first noticed security guard Haro some time prior to 5:30 a.m. "having an argument with one of the picketers," Dennis Schoeny. The latter had been tapping his picket sign against the fence, which sets off Respondent's property along 23rd Street, near the security guard shack. Haro "came out . . . and was telling Schoeny to get away from the gate and don't touch it." Not quite

<sup>2</sup> Respondent does not employ its own security guards. Rather, it contracts with a security guard service, Tandem Security, for security guards, and the latter company assigns guards to Respondent's facility.

<sup>3</sup> As will be discussed infra, while the police were questioning potential witnesses, Tucker avoided them, hiding inside his truck.

<sup>4</sup> Haro wrote that he had been instructed to sweep the entrance to Respondent's driveway and, in doing so, he noticed a nail on the ground; that, as he reached down for the nail, a striker stood in front of and shoved him; that they then exchanged words; and that the picket suddenly assumed a fighting stance and threw his picket sign at Haro, "hitting me in the chin (left side)." James Williams' written account corroborated that of Haro.

<sup>5</sup> Garcia viewed the incident as one entire entity, and "it was the entire incident from beginning to end," which, he believed, was serious enough to warrant Tucker's discharge because "he was fighting. . . . I seen it as the physical . . . the physical confrontation." Garcia conceded that Tucker may have become justifiably offended at some of the language used by the security guard but not to the point of becoming "physical." Also, while maintaining that Tucker threw the picket sign deliberately, Garcia admitted that he would have viewed the matter differently if the sign had accidentally struck the guard—"of course." As to whether the incident was, in fact, a fight, an asserted eye witness, James Williams, testified, "[I]t wasn't really a fight," but "it could have turned out to be a fight." Finally, according to Garcia, while he viewed the tire damage, caused by the nails, as "serious" and while he had "lots of names," no striker was discharged or disciplined for throwing nails. Further, the record reveals that another employee, who Respondent believed had threatened nonstriking employees with death to them and to their families, was suspended but not terminated from his job. According to Garcia, unlike fighting, "I felt that he did not go above and beyond. . . ."

<sup>6</sup> Under questioning by counsel for the General Counsel, Fred Garcia testified that he decided to terminate Tucker because of the "fight" between Haro and him—"that's why he was terminated." While, later during questioning by the undersigned, he opined that Tucker's suspected involvement in another incident away from the picket line also was a factor in his decision, Garcia was clear that he would have terminated Tucker for the Haro incident itself—"the fight . . . to me was above and beyond."

an hour later, according to Tucker, Haro walked off company property into the picket line, carrying a broom. "There was myself and three or four people talking together and there was people going back and forth across the line because we had to . . . to keep in constant movement and I felt somebody nudge me and leaned down and I turned around and saw it was the guard and I asked him in no unkind words what . . . the fuck are you doing across the line. . . . And he raised up and he had something in his hand. It was still fairly dark. And he shoved it up to my face. . . . And he said it two or three times, I got you. I asked him what do you mean you have me, and then we exchanged a few more words."<sup>7</sup> Tucker continued, testifying that "[w]e were cussing each other. . . I said get your ass back across the line where you belong, we're on our side, you get back on your side; and he said something about kicking my ass; he turned around and walked off; and I told him to get his ass back; and then he said I'm going to kick your ass, old man; and he went back across the line and he said something about old man again; I threw the sign down and I said come back out here and I'll show you what an old man can do to you." At this point, according to Tucker, he and Haro were standing "square" to and facing each other, and Tucker threw his picket sign "just to the left front. Just tossed it down like that and it, basically, hit the fence and then just fell down." Tucker specifically denied throwing the sign in Haro's direction or hitting the guard with the sign as "he was on the other side of the fence." The confrontation ended at this point with Tucker saying something else to Haro and the latter walking back toward the company office and laughing at Tucker. Even after Haro left the area, the alleged discriminatee claimed, he remained in an agitated state, and he was "advised" by Earl Brendlinger, the business manager of Local 724, and some other strikers to "go sit in my truck." Heeding this advice, Tucker walked to where his truck was parked and ate his lunch. Within half an hour, he observed police officers arrive, go inside company property, then come outside, and speak to some of the strikers. As he was "pretty sure" that the police were investigating the guard incident, the alleged discriminatee remained sitting inside his truck until the police officers departed. Thereafter, some strikers approached his car informed Tucker that he was being accused of striking the guard with his picket sign and that the police were looking to arrest him. Also, Thomas Skaggs, the Local 724 shop steward walked over to Tucker's truck and advised him to leave and "take the rest of the day off."<sup>8</sup> Tucker left but did return to the picket line a few days later.

Counsel for the General Counsel presented four witnesses, who offered ostensible corroboration for Tucker's denial of having struck security guard Haro with his picket sign during their admitted altercation. Earl Brendlinger, the Local 724 business manager, testified that there were between 20 and 25 striking employees picketing outside the driveway entrance to Respondent's facility by 5 in the morning on November 14 and that he "was talking to the shop steward at the time off to the side of the driveway" when "I heard an argument." Brendlinger "turned around and saw Michael Tucker very close to the security guard who at that time was standing in the street with a broom. . . . At that time, the guard turned and started walking back to the guard shack with Michael

Tucker following close behind and, as soon as I saw that, I immediately went to them to try to get in between them and stop anything from happening." Continuing, the union official said there was "absolutely" no physical contact between the employee and the guard; rather, "they were both yelling very loud at each other and both . . . were using a lot of expletives." Asked if the observed Tucker throw his picket sign down to the ground, Brendlinger answered, "Yes" but that the sign "did not" hit the guard. The witness added, "I was right behind Michael at the time they squared off. Michael had thrown his sign off to the side and had physically challenged the guard. I would say they were maybe five or six feet apart and I moved around in front of Michael to get in between them to stop anything from happening. . . . The guard turned around and walked back to the guard shack and entered [it]."<sup>9</sup> Describing the incident again, Brendlinger stated that the first thing he observed when he turned from speaking to the shop steward was "the guard turning around and heading back to the company's property" and Tucker following him, carrying a picket sign in his hand. "As I walked up behind Michael, the guard . . . walked just inside the company property and then he turned around and they were still arguing. . . . And then Michael threw his sign . . . off to the side. . . . I was coming up right behind him, so I don't know exactly how far he threw it off to the side because then he clenched his fists and challenged the guard to a fight. . . . The guard laughed at him and said . . . that him being an old man and then turned around and walked away" toward the guard shack. Asked whether, when he first observed what was occurring, the guard was already walking back toward the entrance gate, Brendlinger answered, "No. He was standing in the street and Michael was actually in between him and the company property," standing in the driveway. Again, as to whether Tucker threw his picket sign at the guard, Brendlinger was adamant—"He did not. He threw it off to the side." After Haro walked away, according to Brendlinger, Tucker remained "very hot," and he told Tucker "to go and cool off." Tucker did so before the police arrived on the scene. During cross-examination, Brendlinger stated that the guard walked right past Tucker toward the company property and that it was Tucker and not the guard who turned around.

Union Steward Thomas Skaggs testified on behalf of the General Counsel, presumably in order to corroborate the respective testimony of Brendlinger and Tucker. According to Skaggs, early on November 14, "I was standing . . . 10 to 15 feet . . . southeast . . . of the . . . entrance of the gate. . . . I was in the street, but still in the driveway. In front of the driveway. And I saw the guard walking out with a push broom in his hands and the broom was being held like in an aggressive manner. It was being held not like you're going to sweep. . . . He was holding it in the air coming out . . . And he confronted Mike. He came up in front of Mike. And, apparently, he was coming out to sweep the street and there was some nails in the street and I . . . heard the argument begin between them."<sup>10</sup> Skaggs continued, saying that the guard "just got within about six inches of [Tucker's] face. Got right in his face. . . . And then the first words I heard . . . was you want a piece of me, old man. It was the guard yelling that at Mike and I

<sup>7</sup> Tucker believes that the object, which Haro held up to his face, was a nail. Tucker also denied impeding Haro as the latter bent to pick up the nail.

<sup>8</sup> During cross-examination, Tucker conceded stating, under oath at an earlier unemployment compensation hearing, that had no idea why the police came to the facility on November 14 and that no one told him why they were there.

<sup>9</sup> Brendlinger described Haro as being possibly 18 to 20 years of age and Tucker as being in his late 30s or early 40s.

<sup>10</sup> Asked what he was doing at the time, Skaggs replied that he was just "standing. . . . I was really doing nothing." As to where Earl Brendlinger was standing, Skaggs did not even recall him being on the picket line that morning—"I don't know."

was on my way over there.”<sup>11</sup> Then, “there was a lot of cussing back and forth and I don’t know the exact words that were being used. . . . Like 5 seconds worth of screaming. . . . And Mike had this picket sign in his hand. . . . And Mike threw the picket sign it would be like sideways to his left down and the guard was right in front of him and he threw the sign down and then the guard was yelling . . . you want a piece of me, old man, and Mike was responding . . . go ahead . . . if you think you can handle it. . . .” Skaggs was certain that the confrontation took place on “public property. They were on the sidewalk and part of the driveway where it meets the street.” Further, the two men remained face to face, with the entire incident lasting no more than 5 to 10 seconds. Hearing Tucker’s response to the guard, Skaggs ran over to where the two men were standing, “but by the time I got to them, they were already walking away from each other . . . and the guard was walking back in.” As to the throwing of the picket sign, Skaggs was certain that Tucker threw it “downward and to his left. . . . I believe he had it in his left hand or may have had it in both hands. I don’t know, but he threw it to his left. It went to . . . his left side” straight to the ground, and “from where I was, I don’t believe the sign hit [the guard] at all.” On this latter point, asked if the security guard acted as if he had been injured, Skaggs answered, “Not one bit at all.” Also, according to Skaggs, Tucker remained on the picket line for a while but then left, and, 15 minutes after the conclusion of the incident, the police arrived. They spoke to the guard, and one officer approached Skaggs, telling him that, if Tucker showed up again, he would be arrested because the guard claimed he had been assaulted by Tucker and hit in the eye by Tucker’s picket sign. In this regard, Skaggs noticed that the security guard held his right hand over his right eye while questioned by the police. Finally, asked if he advised Tucker to leave, Skaggs said, “No, I sure didn’t tell him.”

Two other construction journeymen employees, who were picketing early in the morning on November 14, testified with regard to what they observed. Richard Lavarda, who is a social friend of Tucker, testified that, at approximately 4:30 a.m., “I was walking the picket line . . . and I saw this guard Haro come up to . . . Schoeny and just start giving him some hell because his picket sign was rubbing the fence. And this guard went off and just started swearing and hollering.” Then, “probably a half hour afterwards,” Lavarda observed Haro “walk out of the guard shack. He had a broom in his hand . . . [with] his hand at the bottom of the broom where the sweep part was. Like a club. . . . And then he just walked straight out and he . . . shoved Michael Tucker with one hand, and, as he was shoving him, he said get out of the way, old man, and he bent down and picked something up . . . and he says I got you and then . . . the guard backed up a little bit and Mike said fuck you punk, and the guard says . . . well, this punk is going to kick your ass and then Mike threw his picket sign down . . . and said . . . come on and kick this old man’s ass and then . . . the guard backed up and went back onto the company property” and turned around and walked back to an office in which the construction workers receive their daily work assignments. During the confrontation, according to Lavarda, he was no more than three feet from Tucker and to his left, and Tucker and Haro were within four feet of and facing each other. As to the throwing of the picket sign, denying that Tucker threw it at the guard, Lavarda said, “Tucker threw the picket sign in a downward motion, under-

handed forward and to the left of the guard. In other words, he threw it out of the way.” During cross-examination, Lavarda further recalled that, after the guard had knelt down in order to pick up an object from the street, he arose and “held [the object] up to Mike Tucker’s face” with his left hand “and he says I got you” and that, when Tucker tossed his picket sign, he did so with his left hand and the sign landed on the driveway “probably ten feet” from the fence. Dennis Schoeny testified that he had a confrontation with Haro that morning prior to what occurred between the guard and Tucker. “I was tapping my picket sign on the fence. [Haro] apparently took offense to that, told me that I had to stop doing that” or “he would make me stop.” Then, approximately 20 minutes later, Haro “walked out from the company property . . . onto the sidewalk, where we were picketing, with a broom in his hand and . . . pushed . . . Mike with his body as he . . . was attempting to walk past.”<sup>12</sup> Then, according to Schoeny, an “argument started and Mr. Tucker took offense to being pushed. And he threw his picket sign down to the ground and they argued and then the guard walked back on company property. Schoeny added that, while he could not recall the guard bending down in order to pick up anything, the guard and Tucker stood within three feet of each other, that Tucker threw the picket sign straight down to his left side with his left hand, and that neither did the picket sign touch the guard nor did the latter act as if he had been hit.”

Security guard, Pedro Haro, who is a young and obviously well-built individual,<sup>13</sup> testified that he was stationed at the driveway entrance gate on November 14 and that, having started his work shift at 11 p.m. the previous night, he was quite “sleepy” early the next morning.<sup>14</sup> According to Haro, at approximately 5:30 a.m., he received a telephone call from an employee, reporting that, after driving onto company property through the entrance, he discovered nails in his truck’s tires and asking Haro to sweep the area clean. At the conclusion of the telephone call, “got a kitchen broom and I started from the shack, making my way up to the fence,” sweeping the pavement toward the street.”<sup>15</sup> Haro was plainly visible to the picketing strikers, and “it took me about five minutes or less. . . . I paused at the fence . . . because . . . [some of the strikers] are in the way and I didn’t want to be in their way, so I’m sweeping, avoiding some of them.” Eventually, he reached the sidewalk, “working my way to the street. Up until then, Haro testified, he and the pickets had managed to avoid bumping into each other, and there was “no problem until Michael Tucker stood in front of me, trying to deter my sweep” in the area of the public sidewalk. The witness continued, “I couldn’t believe

<sup>12</sup> Schoeny testified that he was “standing directly behind” Tucker and that he did not recall Brendlinger being present that morning.

<sup>13</sup> Haro stated that he has trained in the use of karate for 12 years.

<sup>14</sup> Haro’s work shift was due to conclude at 7 a.m.

Haro did recall an incident during which he was inside the guard shack and was being bothered by a picket, who was making noise by rubbing his picket sign against the company fence. Haro stepped out of the guard shack and asked the picket to stop it. The picket replied that he had a right to be on that side of the fence and to make the noise. Haro replied that he was trying to work and that the noise was bothering him. “And . . . he said you think you’re a tough guy and . . . I told him, you think I’m a tough guy, okay, fine . . . and I told him, I said I rather just punch your lights out and give you that satisfaction and we laughed.” While placing the incident early in the morning, he believed it occurred “before the 14th.”

According to Haro, his previous relationship with the picketing strikers had been “great” as he and the strikers had greeted each other with “hi” and he had occasionally given water to the pickets.

<sup>15</sup> The guard shack is 15 feet in back of the entrance gate.

<sup>11</sup> Asked if the guard bent over to pick something up from the street, Skaggs replied, “No, I didn’t see him bend over to pick up [anything].” Further, he did not see the guard put his fist into Tucker’s face.

that [Tucker] was in my way as I was sweeping, and I tried to sweep around him and he would get in front of me. . . . I was still . . . sweeping for the nails. Out of nowhere, I saw . . . this nail right by Michael Tucker's right foot. . . . I bent over to grab the nail with my right hand and the broom was in my left hand. As I was bending over . . . Tucker shoved my with his hip and with his two hands he lightly pushed me . . . when he did that, I instantly grabbed the nail . . . and I stood up and . . . Tucker said . . . you put that nail down, mother fucker, and go back to where you belong to the shack."<sup>16</sup> Haro responded, "I'm sorry, I'm here to sweep, these nails can't be here. . . . [Tucker] said . . . put that down, fuck face." To this, Haro replied, "you're an old man and I can knock the fuck out of you, and I laughed, and he said you think I'm an old man, how about this as an old man, and he goes come try me. So he had his picket stick in his left hand and he tossed it at me. He threw it at me. [It] hit me in the chin and it went out." Then, changing his testimony, Haro stated that the picket stick "was in [Tucker's] right hand . . . because the stick hit me and it went to the right" and that it struck him on the right cheek. Moments later, again changing his testimony, Haro averred that Tucker held the picket stick "in his left hand" and that "he threw the picket . . . sign at me." According to Haro, he and Tucker were no more than an "arm distance" away, and the latter had his left leg extended and threw the picket sign "with his left hand." He added, "He threw it at me, but not as hard to injure me. . . . The little picketing stick hit me and went to the right." As to what part of the picket sign hit him, Haro said, "Not the cardboard. The stick. . . . The bottom part of the stick. The reason I can remember this is because . . . he threw it at me to the right with the right hand . . . ."<sup>17</sup> Haro further testified that Tucker "didn't throw [the picket sign] off to the side or the ground. He threw it at me and said come on, mother fucker."<sup>18</sup> At this point, according to the security guard, "I got a little bit distance, I backed away, I laughed, we cursed, and we cursed at each other. . . ." Then, Haro turned and "started walking away."<sup>19</sup>

During cross-examination, Haro reiterated that he had been struck by "the handle end" of the picket sign on the "right" side of his chin.<sup>20</sup> However, when confronted with his incident report,

<sup>16</sup> At the time, according to Haro, he did not know Tucker's name. Haro recalled that Tucker carried a picket sign in his left hand, that they were no more than 18 inches apart at this point in the incident, and that he (Haro) was holding the broom in his left hand and the nail in his right hand. Finally, Haro specifically denies holding the nail up to Tucker's face ("I wouldn't do that") or saying "I got you" ("I don't use those words").

<sup>17</sup> As to where on his body, he was hit by the stick part of the picket sign, Haro stated that it hit him on "the bottom part of my right cheek"—below the mouth on the right side of the chin—and that it neither hurt him nor left any mark or abrasion.

<sup>18</sup> According to Haro, Tucker assumed a fighting stance after throwing the picket sign.

<sup>19</sup> With regard to where security guard, James Williams, was standing during the incident, Haro said, "Mr. Williams was to my left. . . . I felt him" but "I don't remember seeing him." Haro explained, "When I . . . saw him as I was backing away, he was behind the gate." Asked if Williams was ever in the street with him, Haro said, "I didn't see that." Under cross-examination, Haro testified that "I didn't see Mr. Williams when I was arguing with Mr. Tucker. . . . The only time I got to see . . . he was there was when I was backing away from the scene" and already on company property.

<sup>20</sup> He denied holding his hand to the part of his face where he was hit when the police questioned him. However, Christina Delgadillo contradicted him on this point, stating that, while the guard had no cut or

Respondent's Exhibit No. 1, in which he wrote that he was hit on the "left side" of the chin, Haro averred, "That was a long time ago, but I remember getting hit in the chin. Perhaps at that point left and right was not coming clear. . . ." Further, he could not recall whether he told the police the injury was to the left or right side of his chin and conceded that, at the present time, "I don't remember" on what side of the chin he was struck by Tucker's picket sign. But, when asked by counsel for the General Counsel to touch the spot on his chin, Haro placed his hand on the left side of his chin. With regard to the throwing of the picket sign, Haro stated that Tucker "did not aim at me. He threw it at me. He was not aiming." Given the short distance between them, asked how the cardboard part of the sign could have missed him, Haro stated, "I didn't feel the cardboard, I only felt the little stick hit me flying down. . . . to the right side of me."<sup>21</sup> He added that Tucker didn't just drop the stick and say, okay, lets go. Rather, according to Haro, Tucker physically lifted his arm and threw the sign in a forward thrusting motion such as a basketball pass—"If he wanted to hit me with the stick, he probably would have got the stick and smacked me with it. . . . But he didn't do that. What he did was toss the stick [in] my direction to get into a fighting stance."

Security guard, James Williams, testified presumably in order to corroborate the testimony of Haro. According to Williams, early on November 14, after the striking employees began picketing on the public sidewalk outside of the driveway entrance into Respondent's facility, Haro received a telephone call and reported that "it was to let him know that people was throwing nails on the ground to try to put the trucks flat. So he picked a broom to go outside and sweep the driveway." Then carrying "a big sweep broom," Haro "walked out to the driveway and he started sweeping back and forth to try to get any type of debris that was in front of the driveway. . . . I walked right down with him and stood on the sidewalk" as Haro was "working his way towards the street . . . in front of the driveway area." At this point, Haro was in the path of the picketing, and, as he approached the street, he noticed a three and a half inch nail on the ground. Haro reached down to "pick up the object and one of the . . . picketers . . . nudged him with his knee to try to avoid [Haro] from picking it up" and, at the same time, told Haro "to get his fuckin' ass back in the guard shack where he belonged."<sup>22</sup> Haro then stood up "and acknowledged the gentleman that he was much younger and that the gentleman was kind of old and he would kick his ass. And the gentleman then told [Haro] . . . well, I am going to show you how old I am and . . . threw [his picket sign] at him. . . . Haro turned around and walked to the guard shack. . . ." Williams recalled that the picket threw his picket sign with two hands with what he described as an "ax-type movement"<sup>23</sup> and that "the top edge part" of the placard part of the picket sign struck Haro "on the left-side" of his chin. Williams added that he did not follow Haro back to the guard shack; rather, "I stood out in the driveway." Williams

abrasion from his injury, Haro did have his hand "over his cheek" while the police were present, and "he said his cheek hurt him . . . ."

<sup>21</sup> Nevertheless, the thrown picket sign did not hurt Haro. Thus, he averred that "it was nothing" and it was "no big deal. It didn't give me a bruise, a scratch."

<sup>22</sup> By this time, Williams testified, he was standing "right next to the . . . picketer on his right hand side" within "a couple of feet" of Haro and the picket.

<sup>23</sup> Williams was sure that the picket sign "left" the hands of the striker before hitting Haro and that the striker "threw the sign straight in front of him" and could not have missed Haro, who was standing straight in front of the picket and 3 or 4 feet away.

further recalled that, after the striker said he could kick ass, Haro said he was out there to sweep nails and that, after throwing his picket sign, the striker, who acted "just a little bit irate," set himself in a stance "like Haro was going to come at him, like he was ready to defend himself." During cross-examination, Williams reversed himself, stating that the picket sign struck Haro on the lower right side of his chin. He also told counsel for the General Counsel that, after the picket sign hit the ground, Haro "pointed" at the picket and said "you're in trouble . . . I got you, you're in trouble, and then he turned and he went to the guard shack."

#### B. Legal Analysis and Conclusions

"Section 7 of the Act gives employees the right to peacefully strike, picket, and engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." *Clear Pine Moldings, Inc.*, 268 NLRB 1044, 1045 (1984). However, "striking employees may disqualify themselves from reinstatement by engaging in serious misconduct." *Matlock Truck Body & Trailer Corp.*, 248 NLRB 461, 472 (1980). In all cases involving either the discharge of or the refusal to reinstate strikers for having engaged in such alleged acts of misconduct while picketing, "the burden of proving discrimination is that of the General Counsel." *Rubin Bros. Footwear, Inc.*, 99 NLRB 610, 611 (1952). In this regard, the General Counsel must initially establish that the alleged discriminatee was, in fact, a striker and that his employer took some action him for conduct while said employee engaged in the concerted work stoppage. At this point, the burden shifts to the respondent which must prove that it entertained an honest belief that the striking individual has engaged in misconduct based upon record evidence linking specific persons to specific acts of misconduct. *General Telephone Co. of Michigan*, 251 NLRB 737, 739 (1980). Such constitutes an adequate defense to a charge that the alleged discriminatee's discharge or the refusal to reinstate said individual was violative of the Act except where the General Counsel next affirmatively establishes that the employee did not, in fact, engage in the asserted misconduct or that it was not so flagrant or egregious so as to warrant discharge or denial of reinstatement. *National Gypsum Co.*, 302 NLRB 534, 539-540 (1991); *Ornamental Iron Work Co.*, 295 NLRB 473, 478 (1989). *Desert Inn Country Club & Spa*, 275 NLRB 790, 795 (1985); *Newport News Shipbuilding & Drydock*, 265 NLRB 716 (1982). Once the General Counsel has established that the misconduct did not occur, the burden shifts to the respondent to rebut the denials. *Laredo Coca-Cola Bottling Co.*, 258 NLRB 491, 496 (1981). Finally, in determining whether a striking employee's picket line misconduct is sufficiently serious to justify an employer's refusal to reinstate him, the Board applies an objective test: "whether the misconduct is such that, under the circumstances existing, it may reasonably tend to coerce or intimidate employees in the exercise of rights protected under the Act." *Clear Pine Moldings, Inc.*, supra at 1046.

There is no dispute herein that construction journeyman, Michael Tucker, participated in the concerted work stoppage and economic strike against Respondent, which commenced on November 12. Further, there is no dispute that Respondent terminated Tucker on November 30 assertedly for engaging in strike-related picket line misconduct in the early morning of November 14. The burden, I believe, thereby shifted to Respondent to establish that it honestly believed that Tucker engaged in the misconduct for which he was terminated—provoking and engaging in a fight with security guard, Pedro Haro, including shoving Haro as the latter attempted to pick up a nail, which Haro noticed on the

ground in the street in front of the driveway entrance into Respondent's facility, and then throwing a picket sign at Haro, hitting the latter on his face. In this regard, Fred Garcia, Respondent's operations manager, was uncontroverted that it was his decision to discharge Tucker and that such was based upon the incident reports of security guards Haro and James Williams, the Los Angeles police department report on the incident, Haro's and Williams' sworn statements, which were taken by an attorney for Respondent, and security guard Williams' eye witness identification of Tucker as the striker, who engaged in the asserted misconduct. Counsel for the General Counsel argues that Respondent could not have entertained an honest belief that Tucker engaged in the alleged misconduct inasmuch as it failed to obtain Tucker's or any other striker's versions of what occurred that morning. Contrary to counsel, the Board has long held that an employer may premise his belief of striker misconduct on the reports of its security guards and other statements. *National Gypsum Co.*, supra at 540; *Newport News Shipbuilding & Drydock*, supra; *Laredo Coca-Cola Bottling Co.*, supra at 497. Further, while it is true that Respondent failed to obtain the strikers' versions of the incident, it was not unreasonable to rely upon other eye-witness accounts, those of the security guards who were present during the incident, without speaking to strikers, especially when said accounts were not without foundation and were promptly reported and the witnesses were presumably worthy of belief. *Laredo Coca-Cola Bottling Co.*, supra at 497; *Associated Grocers of New England*, 227 NLRB 1200 (1972). Accordingly, based upon the foregoing, I believe that Respondent has established that its termination of Tucker was based upon an honestly held belief that the alleged discriminatee engaged in misconduct sufficiently serious to warrant termination.

As recognized by the parties, the crux of the instant matter is whether Tucker engaged in the attributed misconduct. Thus, do I rely upon the accounts of Tucker, union official Brendlinger, and three former striking employees that the alleged discriminatee neither shoved security guard Haro nor threw his picket sign at the guard, hitting him on the face, and that, in fact, security guard Haro was the instigator of the November 14 incident, or do I credit security guards Haro and Williams that Tucker instigated the November 14 incident by shoving Haro and that the striker deliberately threw his picket sign at Haro, striking him on his face? In order to resolve this quandary, assessments of the comparative credibility of the several witnesses must be undertaken, and, in this regard, my perception was, at the close of the hearing after observing each witness, and remains, after consideration of the record as a whole, that several of the witness, including the participants in the altercation, dissembled as to all or significant aspects of their respective testimony either in their own self-interest or in order to enhance the legal position of the party on whose behalf the witnesses testified. Specifically, as I viewed his testimony, Michael Tucker failed to exhibit the demeanor of an entirely candid and trustworthy witness. Further, aspects of his account of his altercation with Haro and its aftermath—in particular, where it occurred, where he threw his picket sign, and who told him to leave the area of the picketing—were contradicted by other witnesses, who testified on behalf of the General Counsel, and, during cross-examination, Tucker admitted that an aspect of his trial testimonial was at variance with his own sworn testimony at his unemployment compensation hearing. However, two significant facets of Tucker's testimony—who instigated the altercation and Haro's actions upon picking up the nail—were respectively corroborated by former striking employees, Dennis Schoeny and Richard Lavarda, and the latter two witnesses impressed me with

their candor while testifying. Therefore, as he did not appear to be an inherently dishonest witness, I am confident in relying upon Tucker's own version of events to the extent that his was corroborated by more reliable accounts. Earl Brendlinger's testimonial demeanor appeared to be that of a mendacious witness and, given the inability of either former union steward, Thomas Skaggs, the individual to whom Brendlinger was assertedly speaking at the time of the altercation, or Schoeny to place the union official at the scene of the picketing at the time of the incident, one may reasonably question whether he truly witnessed what occurred and whether he was even at the site of the picketing when the altercation occurred. In these circumstances, I place no reliance upon Brendlinger's putative corroboration of Michael Tucker's version of events.

Pedro Haro failed to impress me as testifying in a candid manner, and not only was his testimony blatantly internally inconsistent, particularly concerning with which hand Tucker assertedly deliberately threw his picket sign at him and what side of his face was hit by the passing picket sign, but also Christina Delgadillo contradicted Haro as to whether he held a hand to his face while speaking to the police and significant aspects of his version of events were utterly contradicted by James Williams, who earlier had offered ostensible corroboration for Haro in his incident report and sworn statement, documents obtained by Respondent during its investigation of the altercation and relied upon by Respondent for its decision to terminate Michael Tucker. With regard to the credibility of Williams, whose testimonial demeanor likewise was that of a disingenuous witness, I note that, while he professed to have been standing "next" to Tucker, no more than three or four feet to his right, Haro averred that he never saw Williams during his confrontation with Tucker. Moreover, while Haro maintained that Tucker instigated the incident by shoving him with a hip and pushing him with both hands, that Tucker threw his picket sign at him with one hand (he was inconsistent as to which), and that he was struck on the face by the bottom end of the stick part of the picket sign, Williams, who presumably had a clear view of what occurred from his position next to Tucker, contradicted Haro, testifying that Tucker merely "nudged [Haro] with his knee," Tucker used both hands to throw the picket sign an "ax-type movement," and Haro was struck by "the top edge" of the placard part of the picket sign. Given the less than honest testimonial demeanor of each and their utterly conflicting testimony, I am unable to, and do not, place any reliance upon the testimony of either security guard as to what occurred during the altercation between Haro and Tucker.

Finally, in my view, the most candid and straightforward accounts of the confrontation were those of the three former striking employees—Skaggs, Schoeny, and Lavarda. Each impressed me as testifying honestly as to his recollection of what occurred on November 14, and, while not entirely consistent, their respective testimony was, for the most part, mutually corroborative.

Accordingly, I shall rely upon their versions and, wherever corroborated by either Skaggs, Schoeny, or Lavarda, Tucker's account in making findings regarding what occurred during the confrontation between the alleged discriminatee<sup>24</sup> and Haro.

Based upon the foregoing, I find that, early in the morning on November 14 in order to sweep nails, which were on the ground

and which had caused damage to the tires of workers, who had crossed the striking employees' picket line, security guard Haro walked through the entrance gate and out to the area of 23rd Street and the intersection of the public sidewalk and Respondent's driveway, menacingly carrying a broom like a club as he maneuvered through the picketing strikers. I further find that, evidently finding a nail on the ground next to where Michael Tucker was standing, either with his hands or body, Haro pushed or shoved<sup>25</sup> Tucker from the spot on which he stood, told Tucker to "get out of the way," knelt, and picked up a large nail; that, upset by the guard's perceived insolence, Tucker asked, "[w]hat . . . the fuck are you doing across the line;" that Haro arose and held the nail close to Tucker's face with his left hand and said, "I got you;"<sup>26</sup> that, face to face and only a few feet apart, Tucker and Haro then began an angry exchange of curse words; and that, in response to being called a "punk" by Tucker, Haro responded that "this punk is going to kick your ass . . ." At this point in their confrontation, I find that Tucker, who had been holding his picket sign in his left hand, threw his placard down and to his left side, with the sign landing on the driveway,<sup>27</sup> prepared himself for a fight, and said, "[C]ome on and kick this old man's ass;" that Haro replied, "[Y]ou want a piece of me, old man;" and that, after Tucker responded, "[G]o ahead . . . if you think you can handle it," the security guard abruptly ended the altercation by backing away and onto Respondent's property.

In short, based upon my above-discussed credibility resolutions, I am convinced that Michael Tucker did not provoke his altercation with security guard Haro. Moreover, I believe that, while he surely cursed and assumed a truculent attitude after Haro shoved him, Tucker's reactions were understandable given the tense and antagonistic atmosphere, which normally pervades a picket line. I further believe that the alleged discriminatee threw his picket sign down and to his left side only in response to what he apparently reasonably construed as a challenge to fight from

Haro<sup>28</sup> and that he did not deliberately throw his placard at the latter—in the circumstances, a nonsensical act. One question remains—was Haro somehow struck in the face by Tucker's thrown picket sign? In this regard, two immediate conclusions are warranted. First, if, indeed, the picket sign did strike Haro, inasmuch as I believe Tucker clearly intended to throw the picket sign down and to his left side, in other words—away from Haro, such

<sup>25</sup> Whether Haro intentionally shoved Tucker in order to establish his control over the situation or merely did so in an effort to pick up the nail is a matter I need not resolve.

<sup>26</sup> While Haro, of course, denied that he used such language, James Williams contradicted Haro, stating that, at one point, during the confrontation, Haro did say the words, "You're in trouble . . . I got you. . . ."

<sup>27</sup> Given the corroborating testimony of Skaggs, Schoeny, and Lavarda on this point, I credit Tucker that he did not throw his picket sign at Haro. In this regard, given the short distance between them and the size of the picket sign, I agree with counsel for the General Counsel that had Tucker thrown the picket sign straight ahead and at Haro, he could not have avoided hitting Haro flush in the face with the placard. Haro and Williams are specifically discredited as to the direction in which Tucker threw his picket sign.

<sup>28</sup> Such an inference is well supported in the record. Thus, I credit Schoeny's testimony that, only 20 minutes before the Tucker-Haro confrontation, the latter had warned him that, if he did not stop tapping the company fence with his picket sign, "he would make me stop. . . ." Moreover, my impression of Haro, while he testified, was that of a belligerent individual, one who would not shy from a physical confrontation. Perhaps his own good sense or the fact that he in the midst of a group of hostile strikers caused him to back off on this occasion.

<sup>24</sup> I recognize that the respective accounts of Skaggs, Schoeny, and Lavarda contradict aspects of Tucker's version of events but attribute this to the honesty of Skaggs, Schoeny, and Lavarda and to Tucker's less than entirely candid testimony and not to any dishonesty, while testifying, by the three current employees.

would have obviously been an inadvertent result—an accident.<sup>29</sup> Also, if the thrown picket sign did strike Haro in his face, it must have barely grazed his chin, and he was not hurt. Thus, the record evidence is that Haro gave no indication of having been hit by the picket sign, and Haro himself conceded that it was “nothing” and “no big deal.” In any event, I do not believe that the picket sign did, in fact, hit Haro in the face. Neither Pedro Haro nor James Williams was a reliable witness; hence, the only credible record evidence herein is that the thrown picket sign did not strike the former in his face. Indeed, the only support for a contrary finding is that, immediately after police officers arrived at the Respondent’s facility, Haro informed them he had been struck on the face by the picket sign. In such circumstances, an argument may be made that Haro would not have fabricated such a story for the police, and, therefore, it must be true. In my view, however, based on the record as a whole, including the credited testimony that Tucker flung his picket sign to the ground and away from Haro and that the security guard manifested no sign of being struck by the picket sign, to find that the picket sign struck Tucker on the cheek or chin would be to engage in undue speculation, and I shall not engage in such an exercise. Put another way, as I believe Haro prevaricated before me after being given the oath, I see no reason why he would not have done likewise during the police investigation—at a time when he was not sworn to tell the truth—in order to further Respondent’s interests herein.

Based upon the foregoing and the record as a whole, I conclude that Michael Tucker did not engage in the picket line misconduct—provoking and engaging in a fight and physical confrontation with security guard, Pedro Haro, including shoving Haro and deliberately throwing a picket sign at him, striking the security guard in his face, which acts formed the asserted basis for his termination, and that, at most, what occurred was a heated, verbal altercation between Tucker and Haro, which the latter had the good sense to end.<sup>30</sup> Accordingly, I find that Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Michael Tucker on November 30<sup>31</sup> and, thereafter, failing and refusing to reinstate him to his former position because he participated in an economic strike against Respondent.

#### CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>29</sup> This is not an insignificant matter as Fred Garcia conceded that he would have reached a different result if, in fact, the thrown picket sign had accidentally struck Haro.

<sup>30</sup> I need not determine whether the verbal altercation would have constituted sufficient cause for termination. Thus, Fred Garcia, who made the decision to terminate Tucker, was clear that “there was a fight and that’s why [Tucker] was terminated.” In such circumstances, it would be improper for me to substitute my judgement for that of Respondent, and, evidently, Respondent did not consider a mere verbal confrontation as sufficiently serious enough to warrant termination. *Cornell Iron Works*, 296 NLRB 614, 615 (1989); *Ornamental Iron Work Co.*, 295 NLRB 473 at fn. 1 (1989).

<sup>31</sup> I have considered that Michael Tucker left the picket line shortly after his verbal altercation with Haro and that, later, he drove away after being informed that the police were about to arrest him for allegedly striking Haro with his picket sign, and, while I recognize that a reasonable argument can be made that Tucker’s behavior was indicative of an admission of having engaged in the alleged misconduct, in light of my belief that what occurred herein was not a physical fight or confrontation and that such was provoked by the conduct of security guard Haro, I shall not draw such an inference from Tucker’s questionable behavior.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By terminating employee, Michael Tucker, on November 30, 1996, and, thereafter, failing and refusing to reinstate him because he participated in a concerted work stoppage and economic strike against it, Respondent engaged in acts and conduct violative of Section 8(a)(1) and (3) of the Act.

4. Respondent’s unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent engaged in serious unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, I shall recommend that Respondent be ordered to cease and desist from engaging in such conduct and that it be ordered to take affirmative actions designed to effectuate the policies of the Act. I have found that Respondent unlawfully terminated employee Michael Tucker on November 30, 1996, and, since said date, has failed and refused to reinstate him to his former position of employment. Accordingly, I shall recommend that Respondent be ordered to offer to Tucker full reinstatement, within 14 days of the Order herein, to his former position, discharging, if necessary, any replacement hired or assigned to perform his work since his termination, and, if said position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges. I shall further recommend that Respondent be ordered to make Tucker whole for any loss of earnings or other benefits<sup>32</sup> by reason of the discrimination against him in accordance with the Board’s decision in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed as in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>33</sup> Finally, I shall recommend that Respondent be ordered to post an appropriate notice to its employees.

On these findings of fact and conclusions of law and the entire record I issue the following<sup>34</sup>

#### ORDER

The Respondent, Patrick Media Group, d/b/a Eller Media Company, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees and failing and refusing to reinstate them because they participated in a concerted work stoppage and economic strike against it.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

<sup>32</sup> Counsel for the General Counsel requests that I order Respondent to make Tucker whole for his expenses in paying health insurance premiums, which he would not have had to pay but for his unlawful discharge. The cases, which counsel relies upon for support, are compliance cases, and I shall leave it to the compliance stage herein for a determination whether Tucker is entitled to the requested reimbursement.

<sup>33</sup> See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

<sup>34</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.



(a) Within 14 days of this Order, offer Michael Tucker full reinstatement to his former position, discharging any replacement employees hired or assigned to perform his work or, if the position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Michael Tucker whole, with interest, for any loss of earnings and benefits suffered as a result of its discrimination against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful termination of Michael Tucker and, within 3 days thereafter, notify him, in writing, that this has been done and that the termination will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Los Angeles, California, copies of the attached notice marked "Appendix."<sup>35</sup> Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and

<sup>35</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

former employees employed by the Respondent at any time since December 2, 1996.

(f) Within 21 days after service by Region 31, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge and fail and refuse to reinstate our employees because they participated in a concerted work stoppage and economic strike against us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer to Michael Tucker full reinstatement to his former job, discharging any replacements hired or assigned to perform his work or, if the position no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights or privileges previously enjoyed.

WE WILL make Michael Tucker whole, with interest, for any earnings and benefits lost as a result of our discrimination against him.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful termination of Michael Tucker and, WE WILL within 3 days thereafter, notify him, in writing, that this has been done and that the terminations will not be used against him in any way.

PATRICK MEDIA GROUP D/B/A ELLER MEDIA  
COMPANY